

**CCRB CASE CLOSING FORM**

Investigator assigned: Shubik		Team: 1	CCRB#: 9602997	FADO: F, A, D
Date of incident: 7/2/96	Time of incident: 10:25 pm	Location of incident: § 87(2)(b) § 87(2)(b)	Pct. of occurrence: 041	Date SOL expires: 1/2/98
Date reported: 7/2/96	Time reported: 11:26 pm	To whom/where/how reported: made in person to 041. Called in by Sgt. O'Sullivan to CCRB, Callender.		
Complainant: § 87(2)(b) § 87(2)(b)	Home address: § 87(2)(b)			
Victim(s): § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)				
Witness(es): § 87(2)(b)				
Subject officer(s) (include rank): Sgt. James Caban PO Jeanette Abreu	Shield: 00311 08023	Tax: 895077 915213	Command: 041 041	
Witness officer(s) (include rank): PO Tina Smith PO Dexter Powers PO John Adorno PO Clee Carter	17340 26921 2080 24398	907383 902222 915294 903574	041 041 041 041	
Allegation(s) by letter:	Recommendation(s):			
A) Sgt. Caban used excessive force by hitting § 87(2)(b) § 87(2)(b) with the handle of a gun.	A) § 87(2)(g)			
B) Sgt. Caban abused his authority by searching the § 87(2)(b) home.	B) § 87(2)(g)			
C) PO Abreu abused her authority by searching the § 87(2)(b) home.	C) § 87(2)(g)			
D) Sgt. Caban abused his authority by not allowing § 87(2)(b) § 87(2)(b) to write his name and shield number.	D) § 87(2)(g)			

### Summary of Facts

Central put out a call of a man with a gun in front of § 87(2)(b). An anonymous caller to 911 described the man as wearing black pants and a blue shirt. Two units responded over the air, sectors George and Charlie from the 041. Sector George did not arrive at the scene. The patrol Sergeant, Sgt. Caban, and his operator, PO Abreu, also went to the location, though they did not call in over the radio.

In front of § 87(2)(b), Sgt. Caban and PO Abrue noticed § 87(2)(b) § 87(2)(b) Mr. § 87(2)(b) had been visiting his friend, § 87(2)(b) § 87(2)(b) who lives at § 87(2)(b) Mr. § 87(2)(b) and Mr. § 87(2)(b) were moving musical equipment into the house at the time. Mr. § 87(2)(b) was inside when the police arrived. Mr. § 87(2)(b) entered the house. The officers suspected § 87(2)(b) of being the subject of the radio call. Sgt. Caban kicked the door of the house. § 87(2)(b) § 87(2)(b) opened the door. Sgt. Caban stood with a gun pointed at Mr. § 87(2)(b) and backed him into the house. In the livingroom/dinning room area, Sgt. Caban commanded Mr. § 87(2)(b) and Mr. § 87(2)(b) to lie down. The men followed the instructions. It is unclear if Sgt. Caban hit Mr. § 87(2)(b) at this point.

PO Powers and PO Sinit from Sector Charlie had also entered the house. § 87(2)(b) § 87(2)(b) Mr. § 87(2)(b) sister, had been in the back bedroom. When she heard the unceasing commotion, she walked to the livingroom/dinning room area. She turned on a light and saw Mr. § 87(2)(b) and Mr. § 87(2)(b) lying on the floor, face down. Sgt. Caban stood over them with his weapon drawn. The other three officers stood by the door. Ms. § 87(2)(b) asked what was going on. Sgt. Caban yelled at her to sit on the sofa. She complied. She picked up a pen and paper and started to write down the Sergeant's name and shield number. Sgt. Caban grabbed the pen and paper and threw it across the room. He may have threatened to arrest Ms. § 87(2)(b) at this point.

Sgt. Caban searched the apartment with PO Abreu. This included looking in flower pots, taking off the couch cushions, opening closets and other rooms. They patted down Mr. § 87(2)(b) and Mr. § 87(2)(b) neither of whom had handcuffs on. PO Abreu found a bag of marijuana on Mr. § 87(2)(b). She handcuffed Mr. § 87(2)(b) PO Abreu wished to avoid a commotion. Instead of issuing Mr. § 87(2)(b) a summons in front of onlookers, she escorted him to the RMP. She and Sgt. Caban drove a few blocks away with Mr. § 87(2)(b) PO Abreu issued Mr. § 87(2)(b) a summons and sent him on his way.

Ms. § 87(2)(b) had memorized Sgt. Caban's name and shield number. She wrote them down as soon as the officers left. She urged her brother to go to the station house and file a complaint. He followed his sister's suggestion.

## Analysis

Mr. § 87(2)(b) alleged that Sgt. Caban hit him over the head with the handle of a gun. § 87(2)(g)  
§ 87(2)(b) His statement was taken soon after the event. He filed his  
complaint minutes after the incident. § 87(2)(g)  
§ 87(2)(b) However, the only civilian who witnessed this portion of the event,  
§ 87(2)(b) was not interviewed. Several attempts were made to interview Mr. § 87(2)(b)  
He agreed to be interviewed on two separate occasions. He neglected to attend either interview.  
§ 87(2)(g) [encl. 25, 26, 27, 29c, 29d].

Both Mr. and Ms. § 87(2)(b) recalled Sgt. Caban searching the front area of the house [encl. 3,5, 30, 31]. § 87(2)(g) Mr. and Ms. § 87(2)(b) remembered Sgt. Caban taking the cushions off the couch and entering the bathroom and kitchen. Ms. § 87(2)(b) remembered him pulling back the shower curtain. She recalled PO Abreu opening a wall unit and looking behind objects in the wall unit. Mr. § 87(2)(b) described Sgt. Caban opening closets in Mr. § 87(2)(b) bedroom. He did not recall PO Abreu performing a search. Three basic situations exist when a search can be performed without a search warrant: "the emergency exception; the plain view exception; the automobile exception." [NYPD Legal Bureau, "Search and Seizure."] § 87(2)(g)

Sgt. Caban is the only officer who did not remember the incident at all [encl. 6]. He was the only officer with no record of the incident in his memo book. § 87(2)(g)

[encl. 14].

PO Smith and Powers clearly entered the house and remained in the front portion of the livingroom / dining room area. Both civilians and PO Smith recall this [encl. 3,5,8]. § 87(2)(g)  
§ 87(2)(b) However, PO Powers denied entering the house [encl. 9] and PO Smith obviously downplayed her role in the event [encl. 8, 28]. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both civilians described Ms. § 87(2)(b) sitting on the couch and attempting to write down the Sergeant's name. They described the Sergeant grabbing her pen and paper and throwing them across the room. Mr. and Mrs. § 87(2)(b) diverged over exactly what Sgt. Caban then said to Ms. § 87(2)(b). Ms. § 87(2)(b) claimed he threatened her with arrest. Mr. § 87(2)(b) remembered him using the word "fuck" when speaking with her. § 87(2)(g)

§ 87(2)(g)

None of the officers remembered this portion of the event.

Investigator: Slubik

Date: 7/24/97

Supervisor: Meades

Date: 7-28-97

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_